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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,531	11/28/2000	Ari Derowe	088/01925	5181
44909	7590	08/15/2005	EXAMINER	
WOLF, BLOCK, SCHORR & SOLIS-COHEN LLP 250 PARK AVENUE NEW YORK, NY 10177			HO, UYEN T	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/701,531	<b>Applicant(s)</b> DEROWE ET AL.	
	<b>Examiner</b> (Jackie) Tan-Uyen T. Ho	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 143-158, 200-205, 219-234 and 236-253 is/are pending in the application.  
4a) Of the above claim(s) 143-158, 200-205 and 219-232 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 240-255 is/are allowed.
- 6) ☒ Claim(s) 233, 234 and 236-239 is/are rejected.
- 7) ☒ Claim(s) 252 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/8/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 233, 234, 236-239 are rejected under 35 U.S.C. 102(e) as being anticipated by Wakabayashi (5,951,576). Wakabayashi disclose a method of delivering a connector to a blood vessel comprising the step of:

- Providing a hole puncher (9), pressing the puncher to the against the wall of the vessel
- Punching a hole in the blood vessel (figs. 5-6)
- Transporting a connector (60) including spikes (45) through a lumen of a hole puncher (9) while the hole puncher contact with the blood vessel (fig. 6-13)
- Engaging the spikes to the blood vessel (fig. 10)
- Removing a sub-assembly (26) of a hole puncher from a channel of the hole puncher, while the hole puncher is adjacent the blood vessel (fig. 14, "adjacent" does not mean "attaching" or "contacting"), the connector (60) being transported through the lumen which accommodates the sub-assembly (19,20). Note: the claim limitations do not limit the order of each step.
- The sub-assembly/cutter/tissue engager being adapted to be vibrated.

***Response to Arguments***

3. Applicant's arguments filed 6/8/05 have been fully considered but they are not persuasive. Applicant argues that Wakabayashi does not teach transporting a connector including at least one spike ... through a lumen of the hole puncher. Examiner respectfully disagrees. The mounted on the anvil and transported through the lumen of outer tube (10). The claims do not limit where from where that the connector is transported. As long as the connector passed through a portion of the lumen to the out side of the lumen, it meets the claimed limitation through "a lumen" of a hole puncher.

Applicant argues that the reference fails to disclose the step of removing a sub-assembly ...from a channel. Examiner respectfully disagrees. The sub-assembly (26) is pushed out/removed from the channel/lumen of the outer tube (10). The claims do not require the sub-assembly extending from proximal to distal of the lumen and removing the sub-assembly from the hole puncher from distal to proximal.

Applicant argues that the cited reference does not disclose the step of removing the tissue engager from a channel of the hole puncher as claimed in claim 240. Examiner agrees that in combination with other limitation of the claim 240, the prior art fails to disclose or suggest the steps of removing the tissue engager from a channel of the hole puncher while the surrounding sheath, utilized in the punching, remains in the vicinity of the blood vessel.

***Allowable Subject Matter***

4. Claims 240-251,253 are allowed. Claim 253 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

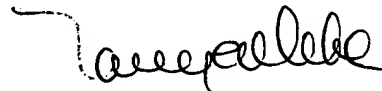
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jackie Ho', with a stylized flourish at the end.

(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731

August 9, 2005